IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

OP.No. 4338 of 2001(N)

PETITIONER:

S.GANGA KUMARI,
W/O.SREEKUMAR, AGED 41 YEARS,
HIGH SCHOOL ASSISTANT, MAHATMA HIGH SCHOOL
FOR BOYS, CHENNITHALA.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.R.SREERAJ
SRI.NIDHI BALACHANDRAN
SRI.HARIRAJ
SRI.SURAJ

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE DISTRICT EDUCATIONAL OFFICER, MAVELIKARA.**

3. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

4. **THE MANAGER, MAHATMA HIGH SCHOOL, CHENNITHALA.**

BY ADV. SRI.N.SUGATHANN for R4
BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN for R1 to R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.4338/2001 N

ORDER ON C.M.P.NO.7138/2000 IN O.P.NO.4338/2000 N

DISMISSED

24/07/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE G.O.(RT) NO.2887/98/G.EDN. DTD. 23/07/98 OF THE FIRST RESPONDENT.**

EXT.P2: **COPY OF THE COMMON JUDGMENT IN O.P.NO'S 15040/98 AND 16707/98 DTD. 15/12/98 OF THIS HONOURABLE COURT.**

EXT.P3: **COPY OF THE JUDGMENT DTD. 2/12/2000 IN WRIT APPEAL NO'S 311/99 AND 435/99 OF THIS HONOURABLE COURT.**

EXT.P4: **COPY OF THE REPRESENTATION DTD. 25/05/2000 SUBMITTED BY THE PETITIONER TO THE MANAGER.**

EXT.P5: **COPY OF THE APPOINTMENT ORDER DTD. 5/06/2000 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.**

EXT.P6: **COPY OF THE REPRESENTATION DTD. 11/07/2000 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

EXT.P7: **COPY OF THE REPRESENTATION DTD. 10/11/2000 SUBMITTED BY THE PETITIONER TO THE DISTRICT EDUCATIONAL OFFICER, MAVELIKKARA.**

EXT.P8: **COPY OF THE JUDGMENT DTD. 19/01/2001 IN O.P.1973/2000 OF THIS HONOURABLE COURT.**

EXT.P9: **COPY OF THE ORDER NO.63874/A2/2000 G1.EDN. DTD.22/01/2001 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

/TRUE COPY/

P.S.TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.4338 of 2001-N

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Dated this the 24th day of July, 2007.

JUDGMENT

Petitioner was appointed as a UPSA on 25-1-1995 in a temporary vacancy till 31-3-1995. That provisional appointment would have brought to her the entitlement under Rule 51A of Chapter XIV-A Kerala Education Rules. But on 25-1-1995 itself, the Manager had obtained "relinquishment letter" from the petitioner. Thereafter, on 5-6-1995, petitioner was appointed as a UPSA on regular basis. While continuing as such, one Smt.Rajasree was appointed as HSA on 20-6-1995 overlooking the claim of the petitioner for promotion as an HSA in terms of Rule 43 of Chapter XIV-A KER. In so far as the legal effect of the relinquishment dated 25-1-1995 is concerned, the parties stand governed by Exts.P2 and P3 judgments of this Court

affirming Ext.P1 decision of the Government holding that the relinquishment letter is a hollow document. This is the natural consequence firstly because, the petitioner had no entitlement for any promotion on 25-1-1995 which she could not have relinquished and secondly because, the statutory right under Rule 51A of Chapter XIV-A is not one that could be relinquished as has been repeatedly held by this Court. Whatever that be, the question of the validity and effect of the so-called relinquishment is no more res integra and the parties are bound by Exts.P2 and P3 judgments affirming the Government decision contained in Ext.P1.

2. Thereafter, the petitioner sought for an order from the statutory authorities recognizing her as entitled to be treated as HSA with effect from 1-6-1998. She had to move this Court for a direction to consider her representation. By Ext.P8 judgment, this Court had taken note of the fact that the Manager had appointed the

petitioner as an HSA only on a later date, though her claim has been upheld as per Ext.P1 Government Order. Accordingly, this Court directed the Government to consider the petitioner's request, also taking into account the judgment of this Court in **Babukutty v. State of Kerala** [2000 (2) KLT 779]. The Government have, thereafter, issued the impugned Ext.P9 whereby the petitioner has been refused relief on the ground that she had not worked as an HSA until 4-6-2000 since the Manager had not promoted her until then and that from 5-6-1995 to 4-6-2000 the petitioner had worked only as a UPSA.

3. To say the least, the impugned decision virtually takes the wind off the sail of the petitioner's entitlements, in terms of Ext.P1 Government Order and Exts.P2 and P3 judgments. If it were the entitlement of the petitioner to be considered as HSA ignoring the so-called "relinquishment letter" dated 5-1-1995, that was with her indefeasible

entitlement to be considered for promotion as an HSA by promotion. Having been denied that and promoted only on 4-6-2000 by the Manager, there is no reason why she should have been given the benefit of notional placement in the category of has, at least, from 1-6-1998 as claimed by her. The impugned order is, therefore, illegal.

In the result, the impugned Ext.P9 is quashed and it is declared that the petitioner is entitled to be treated as HSA under the educational agency in question with effect from 1-6-1998, notionally, without entitlement to any emoluments on that account until 4-6-2000. However, her such notional placement shall be treated for all purposes, including seniority and other benefits. The arrears of salary, if any, and other emoluments on such notional fixation shall be fixed and released to the petitioner within an outer limit of three months from the date of receipt of a copy of this judgment. It is clarified that this judgment does not, in any

manner, decide on any liability of the Manager on such counts.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.4338 of 2001-N

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JUDGMENT

Dated: 24th July, 2007.